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520830—43

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 842

E. A. PARKFORD, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 31–52) is reported in 45 B. T. A. 461. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit (R. 345–351) filed January 19, 1943, is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 19, 1943 (R. 351). Petition for rehearing was denied February 16, 1943 (R. 352). The petition for a writ of certiorari was

filed March 20, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the fact that a contingent fee, consisting of 6,000 shares of stock and accruing to the taxpayer in 1936, was paid to and received by his trustee-receiver in bankruptcy pursuant to an order of the bankruptcy court, relieved the taxpayer of the necessity of including his community shares thereof in his return for that year.

2. For personal services performed by the taxpayer between September, 1935, and February 7, 1936, there accrued to him in 1936 a cash fee of $15,000. The taxpayer's trustee-receiver in bankruptcy (appointed receiver on January 24, 1936, and trustee on March 23, 1936) laid claim to the whole amount of the fee. A compromise was agreed upon between them which was approved by the bankruptcy court and pursuant thereto one-half of the fee was paid to the taxpayer and the remainder to the trustee-receiver.

The question is whether the entire fee, or only the half which the taxpayer received pursuant to the compromise agreement, is includible in the joint return filed by the taxpayer and his wife for the taxable year 1936.

STATUTE INVOLVED

Revenue Act of 1936, c. 690, 49 Stat. 1648:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.
>
> * * * * *

STATEMENT

For the calendar years 1935 and 1936 the taxpayer's books were kept on the accrual basis (R. 33).

1. In 1935, the taxpayer was employed on behalf of the minority stockholders of Universal Consolidated Oil Company to negotiate a settlement of a controversy between them and the receiver of the Richfield Oil Company. Contingent upon success in negotiating the settlement, the taxpayer was to receive 9,000 shares of Universal stock (R. 34), of which he agreed to pay 3,000 shares to an associate, one Bering (R. 34–35). The taxpayer and Bering effected the settlement

in 1935. The agreement of settlement required the approval of the court which had appointed the Richfield receiver. (R. 35.) The stockholders of Universal ratified the agreement on December 23, 1935 (R. 37), and the court approved it on January 15, 1936, with modifications made on January 21, 1936 (R. 36–37).

On January 24, 1936, an involuntary petition in bankruptcy was filed against the taxpayer, and on that day a receiver of his estate in bankruptcy was appointed. The taxpayer was adjudicated a bankrupt on February 14, 1936, and on March 23, 1936, the same individual who had been appointed receiver was appointed trustee. (R. 39.) Pursuant to an order of the bankruptcy court, the 6,000 shares of Universal stock, representing the taxpayer's share of the fee, were turned over to the trustee-receiver by Universal. Subsequently, the stock was sold for $78,000 by the latter who retained the proceeds. The fair market value of the stock as of January 15, 1936, was $48,000. (R. 39–40.) The Commissioner, the Board, and the Circuit Court of Appeals held that one-half the fair market value of the stock on that date should have been included in the taxpayer's return for 1936.[1]

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[1] The taxpayer and his wife are residents of California. The fee in question was community property. They filed separate returns, hence she was chargeable with the return of the other half (R. 33–34, 40).

2. In 1935 the taxpayer was employed to negotiate settlement of a controversy between the Associated Oil Company and one Guiberson. It was agreed that the taxpayer should receive 10 percent of the amount for which the controversy should be settled. The taxpayer's services were begun during the month of September 1935, and continued until about February 7, 1936, a part of them being rendered before and a part after the filing of the petition in bankruptcy. The controversy was settled for $150,000 and thereby the taxpayer became entitled to receive $15,000. (R. 40.)

The trustee-receiver laid claim to the $15,000, which was thereupon deposited in escrow. After hearing in the bankruptcy court, a compromise between the taxpayer and the trustee-receiver was approved by the court under which the taxpayer received $7,500 of the fund and the trustee-receiver received the balance. (R. 40–41.)

The taxpayer and his wife included the $7,500 which the taxpayer had thus received in their joint return for 1936 (R. 41). The Commissioner, the Board, and the court below held that the entire fee should have been included.

ARGUMENT

The taxpayer relies wholly on the fact that he did not actually receive the income, but that it was paid directly to the trustee-receiver in bankruptcy. Both the Board of Tax Appeals and the

Circuit Court of Appeals held that this circumstance did not relieve him from the tax. We submit that the decision is correct. As the taxpayer points out (Pet. 3, 11), the question is one of first impression; there is thus no conflict and as the decision below is correct the petition does not present any sufficient basis for further review.

1. The taxpayer was on the accrual basis (R. 33). Hence the actual receipt of the stock was not the event which caused it to become income. The value of the stock became income when all of the events had occurred which fixed the taxpayer's right to receive the stock. *Spring City Co.* v. *Commissioner,* 292 U. S. 182. The court below decided (R. 347) that this date was January 15, 1936. This was prior to the filing of the bankruptcy petition. There is now no controversy with respect to the correctness of the accrual date. Accordingly, it is of no consequence whether the stock was thereafter received by the taxpayer. This is particularly true here since the taxpayer has abandoned the contention made below, and decided against him (R. 350), that he suffered a loss through the bankruptcy proceedings.

2. Taxpayer's right to the cash commission accrued when the controversy was settled. The services continued until February 7, 1936 (R. 40), and, hence, the settlement occurred subsequent to the filing of the bankruptcy petition. The entire commission became income to the taxpayer and

the fact that he made a settlement with the bankruptcy trustee whereby the latter received half of the money does not alter the taxpayer's liability to account for the entire amount. Since this income was earned through personal services rendered by the taxpayer, the right of anyone else to receive the money is derivative from the taxpayer and, therefore, does not affect his tax liability. *Lucas* v. *Earl,* 281 U. S. 111; *Burnet* v. *Leininger,* 285 U. S. 136. In any event, the bankruptcy trustee was not a stranger, and the taxpayer received the economic benefit of the income through its disbursement to his creditors. Cf. *Helvering* v. *Horst,* 311 U. S. 112; *Helvering* v. *Eubank,* 311 U. S. 122; *Harrison* v. *Schaffner,* 312 U. S. 579; *Old Colony Tr. Co.* v. *Commissioner,* 279 U. S. 716.

CONCLUSION

For the reasons stated the petition for certiorari should be denied.

Respectfully submitted.

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APRIL 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1943